



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing was also scheduled to deal with tenant DJD's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated February 20, 2015 ("10 Day Notice"), pursuant to section 46;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The two tenants, "tenant DJD" and "tenant TD," did not attend the hearing, which lasted approximately 12 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that he served both tenants with the 10 Day Notice on February 20, 2015, by way of posting it to the tenants' rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on February 23, 2015, three days after its posting.

The landlord testified that he served both tenants with the landlord's Application for Dispute Resolution hearing package ("Landlord's Application") on March 2, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with the landlord's Application, to confirm this service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the Landlord's Application on March 7, 2015, five days after its registered mailing.

The landlord confirmed that he received tenant DJD's Application for Dispute Resolution hearing package ("Tenant DJD's Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Tenant's Application.

#### Preliminary Issue – Tenant DJD's Application

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding:** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of tenant DJD's participation in this hearing, I order his entire application, with the exception of the application to cancel the 10 Day Notice, dismissed without liberty to reapply.**

#### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

The landlord testified that this month to month tenancy began on December 1, 2014. Monthly rent in the amount of \$830.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord stated that the security deposit owed was \$415.00 but that the tenants did not make the full payment. The landlord confirmed that he was not seeking this unpaid \$15.00 security deposit amount at this hearing. The landlord provided a copy of the tenancy agreement and a rent ledger, with the landlord's Application.

The landlord testified that the tenants are still residing in the rental unit. The landlord stated that he received an email from the tenants on the morning of this hearing, indicating that they would vacate the rental unit and return the keys to the landlord on the day of this hearing. The landlord indicated that the email also stated that the tenants filed their application to dispute the 10 Day Notice, in order to delay vacating the rental unit. The landlord indicated that the tenants have not provided him with a forwarding address for service. The landlord testified that he still requires an order of possession against both tenants.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,260.00 was due on February 1, 2015. The landlord testified that this amount included unpaid rent of \$415.00 for January 2015, unpaid rent of \$830.00 for February 2015, and the remainder unpaid security deposit of \$15.00. The notice indicates an effective move-out date of March 5, 2015. The landlord confirmed that no rent payments have been made by the tenants since the 10 Day Notice was served upon them.

The landlord stated that \$415.00 is unpaid for January 2015 rent and \$830.00 is unpaid for each of February and March 2014 rent. The landlord seeks a monetary order in the total amount of \$2,075.00 for unpaid rent.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenants.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on February 1, 2015 within five days of being deemed to have received the 10 Day Notice. The tenants did not make any partial payments towards rent. Although tenant DJD made an application pursuant to section 46(4) of the *Act* on February 24, 2015, within five days of being deemed to have received the 10 Day Notice, tenant DJD did not appear at this hearing to make any

submissions. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay full rent within five days led to the end of this tenancy on March 5, 2015, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by March 5, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. Accordingly, I dismiss tenant DJD's application to cancel the landlord's 10 Day Notice.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay \$415.00 for January 2015 rent and \$830.00 for February 2015 rent. Therefore, I find that the landlord is entitled to \$1,245.00 in rental arrears for the above period.

The tenants were required to vacate the rental unit by March 5, 2015. As per the landlord's evidence, the tenants are still residing in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. However, the landlord is required to mitigate loss as per section 7(2) of the *Act*. Rent of \$830.00 was due on March 1, 2015. The tenants did not make any payments towards this rent. Therefore, I find that the landlord is entitled to \$830.00 in rental arrears for the entire month of March 2015. I make this finding because the landlord may have to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and advertise and attempt to re-rent the unit, if applicable.

The landlord continues to hold the tenants' security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,725.00 against the tenants as follows:

Item	Amount
Unpaid January 2015 Rent	\$415.00
Unpaid February 2015 Rent	830.00
Unpaid March 2015 Rent	830.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1,725.00</b>

The landlord is provided with a monetary order in the amount of \$1,725.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Tenant DJD's entire application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 24, 2015

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Residential Tenancy Branch

